



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

CRS

Docket No: 1666-00

28 July 2000

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, United States Code, Section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 19 July 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you enlisted in the Navy on 30 July 1990 at age 18. The record reflects that on 13 March 1991 you requested an administrative separation due to being a homosexual. Subsequently, you received two nonjudicial punishments. The offenses included an unauthorized absence of a day, disrespect, breach of the peace, and assault consummated by battery.

On 16 May 1991 the commanding officer recommended that you be separated with an other than honorable discharge by reason of misconduct due to commission of a serious offense and homosexuality. When informed of the recommendation, you elected to waive your right to present your case to an administrative discharge board. After review by the discharge authority, the recommendation for separation was approved and you were discharged with an other than honorable discharge by reason of misconduct due to commission of a serious offense on 7 June 1991. At that time you were assigned a reenlistment code of RE-4.

In its review of your application the Board carefully weighed all

potentially mitigating factors, such as your youth and immaturity and the contention that you were charged with misconduct due to your declaration of homosexuality. However, the Board concluded that these factors were not sufficient to warrant recharacterization of your discharge, given your two disciplinary actions. In this regard, there is no evidence in the record and you have presented none, that you were charged with misconduct because of your homosexuality. Disrespect, breach of the peace and assault are all potentially serious offenses which could warrant processing for discharge under other than honorable conditions. Therefore, the Board concluded that no change to the discharge is warranted.

Applicable regulations require the assignment of an RE-4 reenlistment code when an individual is discharged due to misconduct. Since you have been treated no differently than others in your situation, the Board could not find an error or injustice in the assignment of your reenlistment code.

Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER  
Executive Director